IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.836 /2005

Decided on 24.5.2007

Commissioner of the Temple Trust of Dharamshala and others.

…Petitioners.

Versus

Presiding Judge Labour Court and another. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes*

For the petitioners : Mr. K.D. Sood, Advocate

For the respondents No.2 Mr. Ankush Dass Sood, Advocate.

Rajiv Sharma, J. (Oral)

This petition is filed against the award dated 18.6.2005 passed in Application No.2 of 2005 by the learned Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala.

The brief facts necessary for the adjudication of the present petition are that the award was made by the learned Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 31 of 1996 on 31.5.2001 whereby the respondent No.2 (herein referred as workman) was held entitled to reinstatement in service with full seniority, but the back wages were restricted to 25% to the last pay drawn till they were reinstated in job. The petitioner-management feeling aggrieved by the award dated 31.5.2001 approached this Court by way of CWP No. 1027/2001. The CWP was decided by this Court on 26.5.2004 and the operative portion of the judgment is reproduced herein below:

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

"The full wages of the workmen has been deposited by the Management considering them in service from 1.6.1996 to 31.7.2002 whereas the award of the Labour Court was made on 31st May, 2001. If the workmen are still aggrieved against their termination effected by the Management of the temple-trust under section 25-F of the I.D. Act, they are at liberty to take appropriate proceedings before an appropriate forum in accordance with law.

It will be pertinent to note at this stage that during the pendency of the writ petition, the workman was retrenched by the petitioner with effect from 27.7.2002. The workman was served with a notice and he was also paid one month wages in accordance with the provisions of the Industrial Disputes Act, 1947 along with retrenchment compensation.

The workman after the dismissal of the writ petition of this Court approached the learned Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala by way of application which is at page 70 of the paper book of this petition. The management had filed detailed reply to the application preferred by the workman. The learned Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala passed the order on 18.6.2005 whereby the workman was held entitled for balance amount as referred in para 23 of the order along with interest @ 9% per annum on yearwise basis on the balance amount. The management has assailed this order dated 18.6.2005.

Mr. K.D. Sood, Advocate appearing on behalf of the petitioner-management has strenuously argued that the application under section 33-C (2) of the Industrial Disputes Act, 1947 was not maintainable before the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala.

Mr. Ankush Dass Sood, Advocate appearing on behalf of the respondent-workman has supported the award dated 18.6.2005.

I have heard the parties and perused the record.

The award has been pronounced by the Labour Court on 31.5.2001 on the basis of which the workman was held entitled to re-engagement but the back wages were restricted to 25%. The writ petition filed by the management against the award was dismissed by this Court but in the meantime the workman was retrenched with effect from 23rd July, 2002. Mr. K.D. Sood, Advocate has stated at Bar that the award dated 31.5.2001 was implemented and the money due to the workman was paid. This contention is not rebutted by Mr. Ankush Dass Sood, Advocate appearing on behalf of workman.

The next question which requires consideration by this Court is that 'whether the Labour Court could hold the workman entitled to wages with effect from 31st July, 2002 to 26th May, 2004"? The answer is in negative.

If the workman was in any manner affected by the retrenchment on the basis of notices served upon him on 23rd July, 2004, he could take recourse under the machinery provided by the Industrial Disputes Act, 1947. The workman was required to raise the demand and thereafter if there was no conciliation in that eventuality he could seek reference to the Labour Court against their retrenchment. The application preferred by the workman without challenging his retrenchment under section 33-C (2) of the Industrial Disputes Act, 1947 was not maintainable before the Labour Court. The order passed by the Labour Court on 18th June, 2005 lacks jurisdiction. The Labour Court has come to a wrong conclusion that the order dated 31st May, 2001 was not implemented. It is settled law that the Labour Court under section 33-C (2) can only award/order payment of back wages which have already been pre-adjudicated upon by way of award or on the basis of settlement. In the present case there was no pre-adjudication of the amount, but it has been claimed by the workman

before the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala on the basis of application under section 33-C (2) of the Industrial Disputes Act, 1947.

The Hon'ble Supreme Court has held in Central Inland Water Transport Corporation Ltd. Vs. The Workmen and another, AIR 1974 SC 1604 that the proceedings under Section 33-C (2) of the Industrial Disputes Act are in the nature of the execution. Their Lordships of the Hon'ble Supreme Court have held as under:

> **"It is now well-settled that a proceeding under section 33-C (2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in term of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In Chief Mining Engineer East India Coal Co. Ltd. V. Rameswar, (1968) 1 SCR 140 = (AIR 1968 SC 218) it was reiterated that proceedings under Section 33 C (2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the position of and executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and must arise in the course of and in relation**

to the relationship between an Industrial workman and his employer."

The Hon'ble Supreme Court has held in ***Municipal Corporation of Delhi Vs. Ganesh Razak and another***, (1995) 1 SCC 235 that without prior adjudication or reorganization of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis is not maintainable under section 33-C (2) of the industrial Disputes Act, 1947. Their Lordships of the Hon'ble Supreme Court have held as under:

"The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under section 33-C (2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under section 33-C (2) like that of the Executive Court's power to interpret the decree for the purpose of its execution."

The Hon'ble Supreme Court has held in ***State Bank of India v. Ram Chandra Dubey,*** (2001) 1 SCC 73 that the jurisdiction of the Labour Court under Section 33-C (2) extends to computation of a pre-existing benefit or one flowing from a pre-existing right and not to computation of a benefit which is considered just and fair. Their Lordships of the Hon'ble Supreme Court have held as under:

> **"Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under section 33-C (2) of the Act. The benefit sought to be enforced under section 33-C (2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under section 33-C (2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicial manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in proceeding to whom a reference under section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High**

Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

The Hon'ble Supreme Court in ***State of U.P. and another V. Brijpal Singh***, (2005) 8 SCC 58 has held as under:

"It is well settled that the workman can proceed under Section 33C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages Pvt. Ltd. Vs. Suresh Chand , (1978) 2 SCC 144 held that a proceeding under Section 33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows:

> **"It is not competent to the Labour Court exercising jurisdiction under Section 33C(2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the Act."**

In the case of Municipal Corporation of Delhi vs. Ganesh Razek & Anr. (1995) 1 SCC 235. this Court held as under:

"The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions

clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compare the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity required interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petition filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually

made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

In the case of State Bank of India vs. Ram Chandra Dubey & Ors. , (2001) 1 SCC 73, this Court held as under:

"When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

The principles enunciated in the decisions referred by either side can be summed up as follows:

"Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C (2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction

of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages"

Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C (2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court

in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under Section 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.

The upshot of the above discussion is that the Labour Court could not entertain and adjudicate upon the application preferred by the workman under section 33-C (2) of the Industrial Disputes Act, 1947. Accordingly the award dated 18.6.2005 is quashed and set aside.

Consequently the writ petition allowed with no order as to costs.

(Rajiv Sharma), Judge

May 24, 2007
Awasthi